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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/821,060	03/29/2001	John Zimmerman	US010076	5337

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BRIARCLIFF MANOR, NY 10510

EXAMINER

SALTARELLI, DOMINIC D

ART UNIT PAPER NUMBER

2623

DATE MAILED: 06/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/821,060	Applicant(s) ZIMMERMAN, JOHN	
	Examiner Dominic D. Saltarelli	Art Unit 2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed March 28, 2006 have been fully considered but they are not persuasive.

First applicant argues that the combination of Schlack and Bose is based upon a combination that could only have been arrived at using impermissible hindsight (applicant's remarks, pages 11-13).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). The examiner submits Barrett et al. (6,005,597) as proof that the act of providing means for a user to manually alter their own personal viewing preference profile data was simply common knowledge in the art at the time (see Barrett, col. 14, lines 9-13).

Second, applicant argues that neither Schlack nor Bose disclose the claimed limitation of "at least one of the multiplicity of axes has an altering mechanism allowing a value associated with a position on the at least one axis to

be changed along the at least one axis", citing that Bose does not have a mechanism for moving values along the accounting period axis shown in fig. 1 (applicant's remarks, page 14)

In response, the axis along which value positions are changed is the axis which orients the directions of the bars representing the values in question (see Bose, col. 3, lines 11-28 which describes how a user will "drag" a representative arrow up or down to input a new value), and not the accounting period axis, much in the same manner as a user would adjust preference information shown in fig. 1 of applicant's disclosure wherein a user will adjust the length of a bar to represent degree of interest. The value associated with the position on the axis would be the height of the bar, representing it's value.

Third, applicant argues that neither Schlack nor Bose disclose the claimed limitation of "modifying said television viewer profile via an access mechanism that allows a viewer traversing of a time axis" (applicant's remarks, page 15).

In response, the examiner must note that the claimed traversal of a time axis is met simply through the selection of variables represented as graphical bars perpendicular to the time axis, as selection of one and then another is a traversal of the displayed time axis, because the modification step is met first through the selection of a weighted viewer preference, and the selection of a first and then a second is a traversal of the time axis.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 18 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. Claim 18 describes modifying a selected weighted viewer preference by moving said weighted viewer preference along the time axis. However, there is no support found in the originally filed specification for this. The only traversal of the time axis contemplated is for the purpose of displaying additional information associated with that time (applicant's specification, page 11, lines 3-9). For example, if a user is viewing their profile data for 5:00pm, and wishes to see their profile data for 8:00pm, then they traverse the time axis in order to see the 8:00pm data. Conversely, claim 18 describes allowing a user to modify data by actually moving preference data associated with a particular time to another time along the time axis. The examiner will take the position that claim 18 must instead refer to the axis along which a modifiable preference value is oriented, such as shown as the horizontal axis along which graphs 14 are oriented in fig. 1.

Claim Rejections - 35 USC § 103

Art Unit: 2623

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-7 and 9-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schlack et al. (US 2002/0129368, of record) [Schlack] in view of Bose et al. (6,271,863) [Bose].

Regarding claim 1, Schlack discloses a television program profile interface having a multiplicity of axes (figs. 21A-B), including a television viewer profile represented by weighted viewer preferences that proportionately change with respect to on axis of the multiplicity of axes (paragraph 185).

Schlack fails to disclose the one of the multiplicity of axes has an altering mechanism allowing a value associated with a position on the axis to be changed along the axis and the television viewer profile weighted viewer preferences have an activation mechanism that allows for viewer selection and manipulation of the television viewer profile weighted viewer preferences.

In an analogous art, Bose teaches a user interface which displays information along a multiplicity of axes (fig. 1) that includes an altering mechanism allowing a value associated with a position on one of the axes to be changed along the axis and an activation mechanism that allows for user selection and manipulation of the information (col. 2, lines 21-41), providing the benefit of enhanced user control over data (col. 1, lines 52-55).

It would have been obvious at the time to a person of ordinary skill in the art to modify the interface of Schlack to include an altering mechanism allowing a value associated with a position on the axis to be changed along the axis and an activation mechanism that allows for viewer selection and manipulation of the information along the axis, as taught by Bose, for the benefit of enhanced user control of preference data.

Regarding claim 2, Schlack and Bose disclose the interface of claim 1, wherein one of the axes comprises time (Schlack, fig. 21A, horizontal axis is time).

Regarding claims 3 and 4, Schlack and Bose disclose the interface of claims 1 and 2, wherein said weighted viewer preferences are represented by bar graphs (Bose, fig. 1).

Regarding claim 5, Schlack and Bose disclose the interface of claim 1, wherein each of said weighted viewer preferences is individually viewer modifiable (Bose teaches each displayed value is a variable modifiable by the user, col. 2, lines 21-41).

Regarding claim 6, Schlack and Bose disclose the interface of claim 1, including means for viewer interaction to alter a topic selection presented by the

television viewer profile to provide said weighted viewer preferences sorted by a selected topic (Schlack teaches viewers may display preference data according to genre, paragraphs 172-178).

Regarding claim 7, Schlack discloses an interactive television program profile interface (figs. 21A-B), including a television viewer profile represented by weighted viewer preferences that proportionately change with respect to on axis of the multiplicity of axes (paragraph 185).

Schlack fails to disclose the television viewer preferences are displayed in graphical form including a plurality of bar graphs and one of the multiplicity of axes has an altering mechanism allowing a value associated with a position on the axis to be changed along the axis and the television viewer profile weighted viewer preferences have an activation mechanism that allows for viewer selection and manipulation of the television viewer profile weighted viewer preferences.

In an analogous art, Bose teaches a user interface which displays information along a multiplicity of axes in bar graph form (fig. 1) that includes an altering mechanism allowing a value associated with a position on one of the axes to be changed along the axis and an activation mechanism that allows for user selection and manipulation of the information (col. 2, lines 21-41), providing the benefit of enhanced user control over data (col. 1, lines 52-55).

It would have been obvious at the time to a person of ordinary skill in the art to modify the interface of Schlack to include displaying the information in bar graph form and an altering mechanism allowing a value associated with a position on the axis to be changed along the axis and an activation mechanism that allows for viewer selection and manipulation of the information along the axis, as taught by Bose, for the benefit of enhanced user control of preference data.

Regarding claim 9, Schlack and Bose disclose the interface of claim 7, wherein one of the axes comprises a time axis (Schlack, fig. 21A, horizontal axis is time).

Regarding claim 10, Schlack and Bose disclose the interface of claim 7, wherein each of said weighted viewer preferences are proportionately changeable with respect to said time axis (Bose teaches each displayed value is a variable modifiable by the user, col. 2, lines 21-41).

Regarding claims 11 and 12, Schlack discloses a method of using a television viewer profile interface, including the act of providing a television viewer profile that presents weighted view preferences along an axis (the horizontal axis is a time axis, the vertical axis is the networks and their values),

said weighted viewer preferences changes proportionally with time (figs. 21A-B and paragraph 185).

Schlack fails to disclose modifying said television viewer profile by viewer interaction via an access mechanism that allows viewer selection and alteration of the television viewer profile by traversing along said axis (the vertical axis).

In an analogous art, Bose teaches a user interface which displays information along a multiplicity of axes (fig. 1) that includes an access mechanism that allows viewer selection and alteration of the information by traversing along an axis (a series of bars are located along a horizontal axis, and each bar along the axis is selectable and alterable, col. 2, lines 21-41 and a user alters information by traversing along the vertical axis which orients the representative bar graph, col. 3, lines 11-28).

It would have been obvious at the time to a person of ordinary skill in the art to modify the method of Schlack to include an access mechanism that allows viewer selection and alteration of displayed information by traversing along said axis, as taught by Bose, for the benefit of enhanced user control of preference data.

Regarding claims 13-18, Schlack and Bose disclose the method of claims 11 and 12, wherein the act of modifying further comprises the access mechanism providing a selection and altering device that allows selection and altering of one of a plurality of weighted viewer preferences with the television viewer profile

(Bose teaches moving a physical point along the vertical axis to change a value, col. 3, lines 11-58).

Regarding claims 19 and 20, Schlack and Bose disclose the interface of claims 1 and 7, wherein the access mechanism alters selected weighted viewer preferences by moving the selected weighted viewer preferences along the axis (Bose teaches moving a physical point along the vertical axis to change a value, col. 3, lines 11-58).

Conclusion

6. Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Art Unit: 2623

7. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

Art Unit: 2623

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Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dominic D. Saltarelli whose telephone number is (571) 272-7302. The examiner can normally be reached on Monday - Friday 7:00am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DS


JOHN MILLER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600